

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARTIN S. MENDOZA,

Petitioner,

vs.

CITY OF YAKIMA,

Respondent.

NO. CV-11-3068-EFS

**ORDER DISMISSING FIRST AMENDED
PETITION**

BEFORE THE COURT is Petitioner Martin S. Mendoza's First Amended Petition. ECF No. 9. Mr. Mendoza, a state prisoner currently housed at the Wapato City Jail, is proceeding *pro se* and *in forma pauperis*; Respondent City of Yakima has not been served. After reviewing the First Amended Petition, the Court finds it fails to cure the deficiencies of the initial complaint.

Mr. Mendoza again names an improper party as Respondent. As previously advised, a petitioner for habeas corpus relief must name the state officer having custody of him as the respondent. Rule 2(a), Rules Governing Section 2254 Cases in the U.S. District Courts; *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir. 1994). Mr. Mendoza's failure to name his custodian as a respondent deprives this Court of personal jurisdiction. See *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

1 In addition, Mr. Mendoza failed to demonstrate that he has
2 exhausted each of his claims through state appellate proceedings to the
3 Washington Supreme Court. Mr. Mendoza indicates he pleaded guilty to
4 Driving While License Suspended in the first degree, and Violation of an
5 Anti-Harassment Order. He was sentenced by the Yakima Municipal Court
6 on April 14, 2011, to 365 days with no days suspended on one count, and
7 365 days with 185 days suspended on the other count. Because Mr.
8 Mendoza failed to exhaust his remedies in state court, this Court may
9 not grant habeas relief. *O'Sullivan v. Boerkel*, 526 U.S. 838, 842-43
10 (1999).

11 Having granted Mr. Mendoza the opportunity to cure these
12 deficiencies, **IT IS ORDERED** the First Amended Petition is **DISMISSED**
13 **without prejudice** for lack of personal jurisdiction, and under Rule 4,
14 Rules Governing Section 2254 Cases in the United States District Courts,
15 as Mr. Mendoza is not entitled to the relief he seeks.

16 **IT IS SO ORDERED.** The District Court Executive is directed to
17 enter this Order, enter judgment and forward a copy to Mr. Mendoza. The
18 Court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an
19 appeal from this decision could not be taken in good faith, and there is
20 no basis upon which to issue a certificate of appealability. 28 U.S.C.
21 § 2253(c); Fed. R. App. P. 22(b).

22 **DATED** this 7th day of October 2011.

23
24 S/ Edward F. Shea
25 EDWARD F. SHEA
26 UNITED STATES DISTRICT JUDGE

27 Q:\Civil\2011\prisoner11cv3068efs-10-7-dishc.wpd